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FEDERAL ELECTION COMMISSION

999 E Street, N.W.

Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 02-06

DATE ACTIVATED: September 5, 2002

EXPIRATION OF STATUTE OF LIMITATIONS:

October 1, 2004¹

STAFF MEMBER: Daniel E. Pollner

SENSITIVE

SOURCE: AUDIT REFERRAL

RESPONDENTS: Bob Franks for U.S. Senate, Inc.

Brad Muniz, Treasurer

Robert Carvalho

Richard Gardner

Kenneth Fritze

Joseph Jingoli

Russell Rossi

Gail Vernick

RELEVANT STATUTES 2 U.S.C. § 431(8)
AND REGULATIONS: 2 U.S.C. § 434(a)(6)(A)
2 U.S.C. § 438(b)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)

11 C.F.R. § 100.7(a)(1)

11 C.F.R. § 103.3(b)

11 C.F.R. § 104.5(f)

11 C.F.R. § 110.9(a)

11 C.F.R. § 110.1(b)

11 C.F.R. § 110.1(l)(5)

11 C.F.R. § 110.3(c)(4)

INTERNAL REPORTS CHECKED: Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

¹ The earliest apparent violation in this matter is an excessive contribution made on October 1, 1999. Therefore, the earliest date on which the five-year limitations period would expire with respect to an apparent violation in this matter is October 1, 2004. 28 U.S.C. § 2462.

1 **I. GENERATION OF MATTER**

2 This matter was generated by an audit of Bob Franks for U.S. Senate, Inc.
3 ("Committee"), which was conducted by the Audit Division of the Federal Election
4 Commission ("Commission") in accordance with 2 U.S.C. § 438(b). Attachment 1. The
5 Committee is the principal campaign committee for the 2000 U.S. Senate campaign of
6 Robert D. Franks ("Candidate").² According to its latest Statement of Organization,
7 which was filed on January 17, 2001, the Committee's current treasurer is Brad Muniz.³

8 The Commission approved the final audit report in this matter on May 2, 2002
9 and it was released to the public on May 14, 2002. Attachment 1 at 1. The audit, which
10 covered the period from September 10, 1999 until December 31, 2000, revealed the
11 following apparent violations of the Federal Election Campaign Act of 1971, as amended
12 ("Act"): (1) excessive contributions; and (2) 48-hour notification violations. *Id.* These
13 apparent violations were referred to this Office on May 17, 2002 and are addressed in this
14 First General Counsel's Report ("Report"). *Id.*

15 **II. THE LAW**

16 **A. Excessive Contributions**

17 **1. Contribution Limitations**

18 Under the Act, no person may make contributions to any candidate and his
19 authorized political committees with respect to any election for Federal office that, in the
20 aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1). A

² The Committee registered with the Commission as the Candidate's principal campaign committee by filing a Statement of Organization on September 14, 1999.

³ Ronald Gravino was identified by the Committee as its treasurer on its first Statement of Organization, which was filed on September 14, 1999. Although it is not clear from the Committee's filings when Mr. Gravino ceased serving as the Committee's treasurer and who succeeded him, Mr. Muniz has apparently been the Committee's treasurer at least since December 30, 1999.

1 contribution is defined in the Act as "any gift, subscription, loan, advance, or deposit of
2 money or anything of value made by any person for the purpose of influencing any
3 election for Federal office." 2 U.S.C. § 431(8); 11 C.F.R. § 100.7(a)(1). No political
4 committee may accept any contribution in violation of the contribution limitations set
5 forth in the Act. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

6 A contribution that is designated in writing by the contributor for a particular
7 election is considered to be a contribution for that election. 11 C.F.R. § 110.1(b)(2)(i). A
8 contribution that is not designated in writing by the contributor for a particular election is
9 deemed to be a contribution for the next election for that Federal office after the
10 contribution is made. 11 C.F.R. § 110.1(b)(2)(ii). A contribution is considered made
11 when the contributor relinquishes control over the contribution by delivering it to the
12 candidate, the political committee, or an agent of the committee. 11 C.F.R. § 110.1(b)(6).
13 A contribution that is mailed is considered made on the date of the postmark. *Id.*

14 The treasurer of a political committee is responsible for examining all
15 contributions received for evidence of illegality and for ascertaining whether the
16 contributions received, when aggregated with all other contributions from the same
17 contributor, exceed the contribution limitations set forth in the Act. 11 C.F.R. § 103.3(b).
18 A contribution that appears illegal, either on its face or when aggregated with other
19 contributions from the same contributor, and which is deposited into a campaign
20 depository, shall not be used for any disbursements until the contribution has been
21 determined to be legal or has been properly redesignated to another election for which the
22 contributor has not exceeded the contribution limitations. 11 C.F.R. § 103.3(b)(4).

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8 **3. Redesignation**

9 Contributions that exceed the limitations in the Act, either on their face or when
10 aggregated with other contributions from the same contributor, may be either deposited
11 into a campaign depository or refunded to the contributor. 11 C.F.R. § 103.3(b)(3). If
12 any such contribution is deposited, the treasurer may seek reattribution of the excessive
13 contribution to another contributor or redesignation of the excessive contribution for
14 another election. *Id.* If reattribution or redesignation is not obtained within 60 days after
15 the excessive contribution is received, the treasurer must refund the contribution. *Id.*

16 A contribution shall be considered to be redesignated for another election
17 if: (1) the treasurer of the recipient political committee requests that the contributor
18 provide a written redesignation of the contribution and informs the contributor that the
19 contributor may request a refund of the contribution as an alternative to providing a
20 written redesignation; and (2) within 60 days after the treasurer's receipt of the
21 contribution, the contributor provides the treasurer with a written and signed
22 redesignation of the contribution for another election. 11 C.F.R. § 110.1(b)(5)(ii).

1 A contribution shall be considered to be reattributed to another contributor
2 if: (1) the treasurer of the recipient political committee asks the contributor whether the
3 contribution is intended to be a joint contribution by more than one person and informs
4 the contributor that he or she may request the return of the excessive portion of the
5 contribution if it is not intended to be a joint contribution; and (2) within sixty days from
6 the date of the treasurer's receipt of the contribution, the contributors provide the
7 treasurer with a written reattribution of the contribution, which is signed by each
8 contributor, and which indicates the amount to be attributed to each contributor if equal
9 attribution is not intended. 11 C.F.R. § 110.1(k)(3)(ii).

10 If a political committee does not retain the written records concerning
11 redesignation or reattribution, the redesignation or reattribution shall not be effective and
12 the original designation shall control. 11 C.F.R. § 110.1(l)(5).⁴
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⁴ The Commission has issued new rules for the redesignation and reattribution of excessive contributions, effective January 1, 2003. See 67 FR 69,928 (Nov. 19, 2002). Under the new rules, political committees will be permitted to presumptively redesignate for another election in the same election cycle contributions that would otherwise be excessive without obtaining a written redesignation from the contributor if: (1) the contribution was not designated in writing by the contributor for a particular election; and (2) within 60 days after the contribution is received, the committee notifies the contributor of the redesignation and offers a refund. *Id.* Political committees will also be permitted to presumptively reattribute the excessive portion of a contribution to any one or more persons whose name is imprinted on the check or other written financial instrument without obtaining a written reattribution from the contributors so long as the committee, within 60 days, notifies all contributors of the reattribution and offers a refund. *Id.*

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4 **III. FACTUAL AND LEGAL ANALYSIS**

5 **A. Excessive Contributions**

6 **1. Audit Division Findings**

7 The Audit Division found that the Committee had accepted excessive
8 contributions from 362 contributors totaling \$347,043 in excess of the applicable
9 limitations. Attachment 1 at 3-5. Of these, 25 contributions for \$24,548 had been
10 transferred to the Committee from another political committee⁵, 107 contributions for
11 \$104,628 had been made directly to the Committee for the 2000 primary election, and
12 230 apparently excessive contributions for \$217,867 had been made directly to the
13 Committee for the 2000 general election. *Id.* The Committee attempted to redesignate
14 some of these contributions, but could not produce the required documentation to support
15 these purported redesignations. Consequently, the Committee's attempts to redesignate
16 were disregarded by Audit Division staff.
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⁵ Prior to running for election to the U.S. Senate in 2000, the Candidate maintained another campaign committee, Franks for Congress, which was used in connection with the Candidate's previous campaigns for election to the U.S. House of Representatives. On March 31, 2000, the Candidate submitted a Termination Report for Franks for Congress, which stated that he would not be a candidate for election to the U.S. House of Representatives in 2000 and that, effective March 31, 2000, he was "closing down" Franks for Congress. On October 5, 2001, the Commission notified the treasurer of Franks for Congress that the committee had been validly terminated per the March 31, 2000 Termination Report. Under Commission rules, the contributions transferred to the Committee from Franks for Congress are deemed to consist of the most recent contributions received by Franks for Congress, the transferor committee. Moreover, since these transfers occurred before the June 6, 2000 primary election, they are deemed to be for that election unless they are otherwise validly designated or redesignated.

2. The Committee Response

The Audit Division recommended that that the Committee either provide documentation to support the redesignation of these contributions or issue refunds in the amount of \$344,595.⁶ Attachment 1 at 4-5. In response, the Committee stated that it "was unable to find documentation that the contributions identified by the Audit staff satisfied the required written redesignation or reattribution requirements under Commission regulations." *Id.* at 5. Apparently lacking sufficient cash to make the necessary refunds, the Committee instead filed amended financial reports, which listed refunds owed to these contributors as outstanding Committee debts. *Id.* Thus, the Committee apparently does not dispute that it accepted these excessive contributions and that they were not validly redesignated.

3. Analysis

In light of the foregoing, the Committee appears to have accepted 362 excessive contributions totaling \$347,043. Although the Committee attempted to remedy some of the excessive contributions by redesignating them, its efforts were not effective because it failed to retain the necessary documentation.

⁶ Although Committee accepted apparently excessive contributions in the amount of \$347,043, it had already issued untimely refunds of \$3,198. Also, two refunds totaling \$750 had not been cashed as of the date of the audit. Thus, the Audit Division recommended that the Committee issue \$344,595 in refunds, which was calculated by taking the \$347,043 in excessive contributions accepted, subtracting \$3,198 in untimely refunds already made, and then adding \$750 in refunds to be reissued.

Pursuant to Commission-established thresholds, this Office generally names as respondents only those contributors who

In light of the resources required to pursue enforcement actions against , this Office recommends that the Commission name as respondents only the following six individuals who contributed more than three times the permissible limit, or more than \$3,000.⁹

NAME	TOTAL CONTRIBUTION	EXCESSIVE AMOUNT	ELECTION
Robert Carvalho	\$4,000	\$3,000	Primary
Richard Gardner	\$4,000	\$3,000	Primary
Kenneth Fritze	\$4,000	\$3,000	General
Joseph Jingoli	\$4,000	\$3,000	General
Russell Rossi	\$4,000	\$3,000	General
Gail Vernick	\$3,500	\$2,500	General

Given that these individuals contributed over three times the legal limit, this Office recommends that the Commission find reason to believe that they violated 2 U.S.C. §441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making excessive contributions.

Given the relatively small amount of the contributions, however, this Office recommends that the Commission exercise its prosecutorial discretion by taking no

⁹ The Commission has used case-specific thresholds in other matters.

1 further action with respect to these individuals.¹⁰ This Office further recommends that the
2 Commission take no action with respect to the other individual contributors who made
3 apparently excessive contributions to the Committee.
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¹⁰ Taking no further action as to these individuals is further justified because Mr. Carvalho's and Mr. Gardner's contributions are entirely curable under the new rules for presumptive redesignation and reattribution, and \$1,000 of Mr. Fritze's, Mr. Rossi's and Ms. Vernick's contributions are likewise curable.

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V. RECOMMENDATIONS

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4. Find reason to believe that Robert Carvalho, Richard Gardner, Kenneth Fritze, Joseph Jingoli, Russell Rossi and Gail Vernick violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1), but take no further action as to these respondents.
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Lawrence H. Norton
General Counsel

3/7/07
Date

BY:


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